

**Introduced by Senator Huff**

February 20, 2014

---

An act to amend Sections 44955, 44956, and 44957 of the Education Code, relating to school employees.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1185, as introduced, Huff. School teachers: termination and reappointment: seniority deviation.

Existing law provides that, when the services of employees are terminated pursuant to a reduction in workforce, a school district is required to terminate the employees in order of seniority. Existing law further provides those employees with a preferred right to reappointment and an opportunity for substitute service in order of seniority. Existing law authorizes a school district to deviate from the order of seniority for those purposes for specified reasons, including if the school district demonstrates a specific need for personnel to teach a specific course or course of study and the certificated employee has special training and experience necessary to teach that course or course of study that others with more seniority do not possess.

This bill would provide that the specific course or course of study for which a school district may deviate from the order of seniority for purposes of termination, reappointment, and the opportunity for substitute service includes, but is not limited to, a career pathways program. The bill would also make numerous nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 44955 of the Education Code is amended to read:

44955. (a) ~~No~~A permanent employee shall *not* be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and ~~no~~ a probationary employee shall *not* be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) ~~Whenever~~*(1) If* in any school year the average daily attendance in all of the schools of a *school* district for the first six months in which school is in session ~~shall have~~ *has* declined below the corresponding period of either of the previous two school years, ~~whenever~~ *if* the governing board of a *school district* determines that attendance in ~~a the~~ *the school* district will decline in the following year as a result of the termination of an interdistrict tuition agreement as ~~defined~~ *described* in Section 46304, ~~whenever~~ *if* a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or ~~whenever~~ *if* the amendment of state law requires the modification of curriculum, and ~~when~~ *if* in the opinion of the governing board of the *school* district it ~~shall have~~ *has* become necessary by reason of any of these conditions to decrease the number of permanent employees in the *school* district, the governing board of *the school district* may terminate the services of not more than a corresponding percentage of the certificated employees of the *school* district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of ~~no a~~ permanent employee ~~may~~ *shall not* be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service ~~which said that the~~ permanent employee is certificated and competent to render.

~~In~~  
(2) *In* computing a decline in average daily attendance for purposes of this ~~section~~ *subdivision* for a newly formed or reorganized school district, each school of the *school* district shall be deemed to have been a school of the newly formed or

1 reorganized *school* district for both of the two previous school  
2 years.

3 ~~As~~

4 (3) ~~As~~ between employees who first rendered paid service to  
5 the *school* district on the same date, the governing board *of the*  
6 *school district* shall determine the order of termination solely on  
7 the basis of needs of the *school* district and the ~~students thereof.~~  
8 *pupils of the school district*. Upon the request of any employee  
9 whose order of termination is so determined, the governing board  
10 *of the school district* shall furnish in writing no later than five days  
11 ~~prior to~~ *before* the commencement of the hearing held in  
12 accordance with Section 44949, a statement of the specific criteria  
13 used in determining the order of termination and the application  
14 of the criteria in ranking each employee relative to the other  
15 employees in the group. ~~This~~ *The* requirement that the governing  
16 board *of the school district* provide, on request, a written statement  
17 of reasons for determining the order of termination shall not be  
18 interpreted to give affected employees any legal right or interest  
19 that would not exist without such a requirement.

20 (c) (1) Notice of ~~such~~ termination of services shall be given  
21 before ~~the 15th of~~ May 15 in the manner prescribed in Section  
22 44949, and services of such employees shall be terminated in the  
23 inverse of the order in which they were employed, as determined  
24 by the governing board *of the school district* in accordance with  
25 ~~the provisions of~~ Sections 44844 and 44845. ~~In the event that~~ *If* a  
26 permanent or probationary employee is not given the notices and  
27 a right to a hearing as provided ~~for~~ in Section 44949, he or she  
28 shall be deemed reemployed for the ensuing school year.

29 ~~The~~

30 (2) *The* governing board *of the school district* shall make  
31 assignments and reassignments in ~~such~~ a manner that employees  
32 shall be retained to render any service ~~which~~ *that* their seniority  
33 and qualifications entitle them to render. However, ~~prior to~~ *before*  
34 assigning or reassigning ~~any~~ a certificated employee to teach a  
35 subject ~~which~~ *that* he or she has not previously taught, and for  
36 which he or she does not have a teaching credential or ~~which~~ *that*  
37 is not within the employee's major area of postsecondary study or  
38 the equivalent thereof, the governing board *of the school district*  
39 shall require the employee to pass a subject matter competency  
40 test in the appropriate subject.

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The *school* district demonstrates a specific need for personnel to teach a specific course or course of study, *including, but not limited to, a career pathways program*, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, ~~which~~ *that* others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

SEC. 2. Section 44956 of the Education Code is amended to read:

44956. (a) ~~Any~~ A permanent employee whose services have been terminated as provided in Section 44955 shall have the following rights:

(1) For the period of 39 months from the date of ~~such the~~ termination, ~~any~~ *an* employee who in the meantime has not attained the age of 65 years shall have the preferred right to reappointment, in the order of original employment as determined by the *governing board of the school district* in accordance with ~~the provisions of~~ Sections 44831 to 44855, inclusive, if the number of employees is increased or the discontinued service is reestablished, with no requirements that were not imposed upon other employees who continued in service; provided, that no probationary or other employee with less seniority shall be employed to render a service ~~which said that the~~ employee is certificated and competent to render. However, ~~prior to~~ *before* reappointing any employee to teach a subject ~~which that~~ he or she has not previously taught, and for which he or she does not have a teaching credential or ~~which that~~ is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board *of the school district* shall require the employee to pass a subject matter competency test in the appropriate subject.

(2) The ~~aforesaid~~ right to reappointment *described in paragraph (1)* may be waived by the employee, without prejudice, for not more than one school year, unless the *governing board of the school district* extends this right, but ~~such that~~ waiver shall not deprive

1 the employee of his *or her* right to subsequent offers of  
2 reappointment.

3 (3) Notwithstanding paragraph (1), a school district may deviate  
4 from reappointing a certificated employee in order of seniority for  
5 either of the following reasons:

6 (A) The *school* district demonstrates a specific need for  
7 personnel to teach a specific course or course of study, *including*,  
8 *but not limited to*, a *career pathways program*, or to provide  
9 services authorized by a services credential with a specialization  
10 in either pupil personnel services or health for a school nurse, and  
11 that the employee has special training and experience necessary  
12 to teach that course or course of study, or to provide those services,  
13 ~~which~~ *that* others with more seniority do not possess.

14 (B) For purposes of maintaining or achieving compliance with  
15 constitutional requirements related to equal protection of the laws.

16 (4) As to ~~any such~~ *an* employee who is reappointed, the period  
17 of his *or her* absence shall be treated as a leave of absence and  
18 shall not be considered as a break in the continuity of his *or her*  
19 service, he *or she* shall retain the classification and order of  
20 employment he *or she* had when his *or her* services were  
21 terminated, and credit for prior service under any state or *school*  
22 district retirement system shall not be affected by ~~such~~ *the*  
23 termination, but the period of his *or her* absence shall not count  
24 as a part of the service required for retirement.

25 (5) During the period of his *or her* preferred right to  
26 reappointment, ~~any such~~ *the* employee shall, in the order of original  
27 employment, be offered prior opportunity for substitute service  
28 during the absence of any other employee who has been granted  
29 a leave of absence or who is temporarily absent from duty;  
30 provided, that his *or her* services may be terminated upon the  
31 return to duty of ~~said~~ *the* other employee and that ~~said~~ *the* substitute  
32 service shall not affect the retention of his *or her* previous  
33 classification and rights. If, in any school year the employee serves  
34 as a substitute in any position requiring certification for any 21  
35 days or more within a period of 60 schooldays, the compensation  
36 the employee receives for substitute service in that 60-day period,  
37 including his or her first 20 days of substitute service, shall ~~be~~ not  
38 *be* less than the amount the employee would receive if he or she  
39 were being reappointed.

(6) (A) During the period of the employee's preferred right to reappointment, the governing board of the *school* district, if it is also the governing board of one or more other *school* districts, may assign him *or her* to service, which he *or she* is certificated and competent to render, in said other *school* district or districts; provided, that the compensation he *or she* receives ~~therefor~~ *for the service* may, in the discretion of the governing board *of the school district*, be the same as he *or she* would have received had he *or she* been serving in the *school* district from which his *or her* services were terminated, that his *or her* service in the ~~said~~ other *school* district or districts shall be counted toward the period required for both state and local retirement, as defined by Section 22102, as though rendered in the *school* district from which his *or her* services were terminated, and that no permanent employee in ~~said~~ the other *school* district or districts shall be displaced by him *or her*.

It

(B) ~~It~~ *It* is the intent of this ~~subsection~~ *paragraph* that the employees of a school district, the governing board of which is also the governing board of one or more other school districts, shall not be at a disadvantage as compared with employees of a unified school district.

(7) At any time ~~prior to~~ *before* the completion of one year after his *or her* return to service, he *or she* may continue or make up, with interest, his *or her* own contributions to any state or *school* district retirement system; for the period of his *or her* absence, but it shall not be obligatory on state or *school* district to match ~~such~~ *those* contributions.

(8) Should he *or she* become disabled or reach retirement age at any time before his *or her* return to service, he *or she* shall receive, in any state or *school* district retirement system of which he *or she* was a member, all benefits to which he *or she* would have been entitled had such event occurred at the time of his *or her* termination of service, plus any benefits he *or she* may have qualified for ~~thereafter~~, *after his or her termination of service*, as though still employed.

SEC. 3. Section 44957 of the Education Code is amended to read:

1     44957. ~~Any~~A probationary employee whose services have  
2 been terminated as provided in Section 44955 shall have the  
3 following rights:

4     (a) For the period of 24 months from the date of ~~such the~~  
5 termination, ~~any an~~ employee who in the meantime has not attained  
6 the age of 65 years shall have the preferred right to reappointment,  
7 subject to the prior rights to reappointment by all permanent  
8 employees as set forth in Section 44956, in the order of original  
9 employment as determined by the governing board *of the school*  
10 *district* in accordance with ~~the provisions of~~ Sections 44831 to  
11 44855, inclusive, if the number of employees is increased or the  
12 discontinued service is reestablished, with no requirements that  
13 were not imposed upon other employees who continued in service.  
14 Except as otherwise provided, ~~no a~~ probationary or temporary  
15 employee with less seniority shall *not* be employed to render a  
16 service ~~which that~~ such employee is certificated and competent to  
17 render and provided that such an employee shall be given a priority  
18 over employees whose right to a position is derived pursuant to  
19 Section 44918. However, ~~prior to before~~ reappointing ~~any an~~  
20 employee to teach a subject ~~which that~~ he or she has not previously  
21 taught, and for which he or she does not have a teaching credential  
22 or ~~which that~~ is not within the employee's major area of  
23 postsecondary study or the equivalent thereof, the governing board  
24 *of the school district* shall require the employee to pass a subject  
25 matter competency test in the appropriate subject.

26     (b) Notwithstanding subdivision (a), a school district may  
27 deviate from reappointing a probationary employee in order of  
28 seniority for either of the following reasons:

29     (1) The *school* district demonstrates a specific need for personnel  
30 to teach a specific course or course of study, *including, but not*  
31 *limited to, a career pathways program*, or to provide services  
32 authorized by a services credential with a specialization in either  
33 pupil personnel services or health for a school nurse, and that the  
34 employee has special training and experience necessary to teach  
35 that course or course of study, or to provide those services, ~~which~~  
36 *that* others with more seniority do not possess.

37     (2) For purposes of maintaining or achieving compliance with  
38 constitutional requirements related to equal protection of the laws.

39     (c) As to ~~any such an~~ employee who is reappointed, the period  
40 of his *or her* absence shall be treated as a leave of absence and

1 shall not be considered as a break in the continuity of his *or her*  
2 service, he *or she* shall retain the classification and order of  
3 employment he *or she* had when his *or her* services were  
4 terminated, and credit for prior service under any state or *school*  
5 district retirement system shall not be affected by ~~such the~~  
6 termination; provided, however, that the period of his *or her*  
7 absence shall not be counted as a part of the service required for  
8 attaining permanent status in the *school* district or, except as  
9 provided in subdivision (e), for retirement purposes.

10 (d) During the period of his *or her* preferred right to  
11 reappointment, ~~any such the~~ employee shall, in the order of original  
12 employment, and subject to the rights of permanent employees as  
13 set forth in Section 44956, be offered prior opportunity for  
14 substitute service during the absence of any other employee who  
15 has been granted leave of absence or who is temporarily absent  
16 from duty; provided, that his *or her* services may be terminated  
17 upon a return to duty of ~~such the~~ other employee, that such  
18 substitute service shall not affect the retention of his *or her*  
19 previous classification and rights, and that such an employee shall  
20 be given a priority over employees whose right to a substitute  
21 position is derived pursuant to Section 44918.

22 (e) At any time ~~prior to~~ *before* the completion of one year after  
23 his *or her* return to service, an employee reappointed under ~~the~~  
24 ~~provisions of~~ this section may elect to continue or to reinstate his  
25 *or her* membership and interest in any state or *school* district  
26 retirement system and to receive retirement benefits as if no  
27 absence from service had occurred. In the event of ~~such that~~  
28 election the employee shall pay into the retirement system the  
29 amount of his *or her* share of contribution and the *school* district's  
30 share of contribution attributable to the period of absence and the  
31 amount of any contributions withdrawn, plus interest.